

## Message Text

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12

ORIGIN EB-07

INFO OCT-01 AF-08 ARA-10 EUR-12 EA-09 NEA-10 ISO-00 SIG-02

CAB-05 CIAE-00 COME-00 DODE-00 DOTE-00 INR-07 NSAE-00

CIEP-02 FAA-00 L-03 /076 R

DRAFTED BY EB/AVP:SCKEITER:VLV

APPROVED BY EB/OA:RABROWN, ACTING

EB/AVP - AJWHITE

CAB - CMENGES (SUB)

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FM SECSTATE WASHDC

TO AMEMBASSY LONDON

AMEMBASSY PARIS

AMEMBASSY ROME

AMEMBASSY BONN

AMCONSUL CASABLANCA

AMEMBASSY BUENOS AIRES

AMCONSUL MELBOURNE

AMEMBASSY VIENNA

AMEMBASSY BRUSSELS

AMEMBASSY BRASILIA

AMEMBASSY OTTAWA

AMEMBASSY NICOSIA

AMEMBASSY PRAGUE

AMEMBASSY COPENHAGEN

AMEMBASSY QUITO

AMEMBASSY HELSINKI

AMEMBASSY ATHENS

AMEMBASSY BUDAPEST

AMEMBASSY NEW DELHI

AMEMBASSY DUBLIN

AMEMBASSY TOKYO

AMEMBASSY MONROVIA

AMEMBASSY MEXICO

AMEMBASSY THE HAGUE

AMEMBASSY WELLINGTON

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AMEMBASSY OSLO

AMEMBASSY LIMA  
AMEMBASSY LISBON  
AMEMBASSY MADRID  
AMEMBASSY BERN  
AMEMBASSY ANKARA  
AMEMBASSY MOSCOW  
AMEMBASSY CARACAS  
AMEMBASSY BELGRADE  
AMEMBASSY CANBERRA  
AMEMBASSY PRETORIA  
AMEMBASSY STOCKHOLM  
INFO AMCONSUL RIO DE JANEIRO  
AMCONSUL MELBOURNE  
AMCONSUL SAO PAULO  
AMCONSUL JOHANNESBURG

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E.O. 11652: N/A

TAGS: EAIR, XX

SUBJECT: CIVAIR - EXCESS BAGGAGE RULES

1. CIVIL AERONAUTICS BOARD HAS APPROVED THE STATEMENT BELOW FOR TRANSMISSION TO US EMBASSIES LOCATED IN COUNTRIES WITH A SIGNIFICANT INTERNATIONAL AVIATION INDUSTRY. ADDRESSEES IN COUNTRIES WHICH HAVE CLEARLY SIGNED THEIR DISSATISFACTION WITH THE BOARD'S RECENT ACTIONS IN THIS FIELD (SUCH AS SWITZERLAND, FRG, FRANCE, UK, DENMARK, NORWAY, SWEDEN, BRAZIL, JAPAN, VENEZUELA, MEXICO, NETHERLANDS, ARGENTINA AND ITALY) SHOULD BRING THE STATEMENT TO THE ATTENTION OF APPROPRIATE OFFICIALS, USING IT AS THE BASIS FOR AN INFORMAL ARGUMENT THAT THE BOARD HAS ACTED ONLY AFTER LONG AND CAREFUL CONSIDERATION, AND THAT THE FACTS WARRANT SIMILAR ACTION BY OTHER CIVIL AVIATION AUTHORITIES.

2. THE DEPARTMENT BELIEVES THAT THIS QUESTION IS OF SUFFICIENTLY WIDESPREAD INTEREST THAT IT WOULD BE USEFUL TO UNCLASSIFIED

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MAKE A SIMILAR APPROACH TO AVIATION AUTHORITIES IN MOST OTHER COUNTRIES WITH NATIONAL AIRLINES, BUT IT LEAVES THE DECISION FOR EACH COUNTRY TO THE POST INVOLVED.

3. PLEASE REPORT REACTION, OR DECISION NOT TO MAKE APPROACH.

4. TEXT OF CAB STATEMENT: BY ORDER 72-10-91, OCTOBER 27,

1972, THE BOARD INSTITUTED AN INVESTIGATION OF THE LAWFULNESS OF THEN EXISTING TARIFFS REFLECTING THE IATA-AGREED FREE BAGGAGE ALLOWANCE AND EXCESS BAGGAGE CHARGES. IN CONCLUDING TO INITIATE THIS INVESTIGATION, THE BOARD CONSIDERED THAT THE IATA RULES DATED BACK TO THE TIME WHEN AIRCRAFT OPERATIONS WERE SEVERELY WEIGHT LIMITED; THAT THE YIELD FROM EXCESS BAGGAGE CHARGES WAS SIGNIFICANTLY GREATER THAN THE YIELD FOR PRACTICALLY ALL OTHER CATEGORIES OF TRAFFIC AND MAY NOT HAVE BEEN REASONABLY RELATED TO THE COSTS OF PROVIDING THE SERVICE; AND THAT SUCH RULES SHOULD BEAR THE SCRUTINY OF AN INVESTIGATION. THE ORDER OF INVESTIGATION WAS SERVED UPON ALL US SCHEDULED AIR CARRIERS AND ALL FOREIGN AIR CARRIERS OPERATING TO/FROM THE UNITED STATES AS WELL AS THOSE PARTICIPATING IN JOINT TARIFFS. ALL OF THESE CARRIERS WERE MADE PARTIES TO THE INVESTIGATION.

FORMAL INVESTIGATIONS ORDERED BY THE BOARD, SUCH AS THE EXCESS BAGGAGE CASE, INVOLVE EVIDENTIARY HEARINGS BEFORE AN ADMINISTRATIVE LAW JUDGE AND INCLUDE PRESENTATION OF DIRECT EXHIBITS, REBUTTAL EXHIBITS, TESTIMONY FROM WITNESSES UNDER OATH, CROSS-EXAMINATION, AND AFTER CONCLUSION OF THE HEARING SUBMISSION OF BRIEFS TO THE JUDGE. AFTER ISSUANCE OF THE ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION IN THIS CASE, ALL PARTIES PRESENTED FURTHER WRITTEN AND ORAL ARGUMENTS TO THE BOARD. ONLY AFTER COMPLETION OF ALL THESE FORMAL PROCEDURES DID THE BOARD ISSUE ITS FEBRUARY 25, 1976, DECISION DISAPPROVING IATA RESOLUTIONS 310 AND 311 AND ORDERING THE FREE BAGGAGE ALLOWANCE TARIFF RULES CANCELLED WITHIN ONE YEAR, AND THE EXCESS BAGGAGE CHARGE TARIFF RULES CANCELLED WITHIN 90 DAYS. IN ACCORDANCE WITH US LAW, THIS DECISION BECAME FINAL AFTER REVIEW BY THE PRESIDENT OF THE UNITED STATES.

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OF 150 FOREIGN FLAG CARRIERS NAMED AS PARTIES TO THE INVESTIGATION, ONLY 10 ACTUALLY CHOSE TO PARTICIPATE IN THE INVESTIGATION.

WITH RESPECT TO THE ISSUE OF FREE BAGGAGE ALLOWANCE, THE BOARD CONCLUDED, BASED UPON THE EVIDENCE ESTABLISHED IN THE INVESTIGATION, THAT THERE IS NO LONGER A REASON TO DEFINE THE ALLOWANCE FOR FREE BAGGAGE ON THE BASIS OF WEIGHT ALONE. THE BOARD HELD THAT WEIGHT IS NO LONGER THE PREDOMINANT PAYLOAD LIMITING FACTOR, AS IT USED TO BE BEFORE THE ADVENT OF MODERN JET AND WIDEBODY AIRCRAFT. ACCORDINGLY, THE BOARD FOUND THE EXISTING FREE BAGGAGE

ALLOWANCE TO BE UNLAWFUL AND ORDERED THAT IT BE CANCELLED BY FEBRUARY 12, 1977.

ON THE ISSUE OF EXCESS BAGGAGE CHARGES THE BOARD APPLIED ITS LONGSTANDING POLICY THAT PASSENGERS SHOULD NOT BE CHARGED FOR SERVICES WHICH THEY DO NOT RECEIVE. THE EVIDENCE PRESENTED IN THE RECORD OF THE EXCESS BAGGAGE CASE DEMONSTRATED CONVINCINGLY THAT THE IATA CHARGE OF 1 PERCENT OF THE FIRST CLASS FARE FOR EACH EXCESS KILOGRAM WAS SUBSTANTIALLY IN EXCESS OF INDUSTRY-WIDE BAGGAGE SERVICE COSTS. HENCE, PASSENGERS WERE PAYING A PREMIUM FOR EXCESS BAGGAGE FOR WHICH THEY DID NOT RECEIVE SERVICES OF EQUIVALENT VALUE. THE BOARD FOUND THAT SEVEN-TENTHS OF ONE PERCENT OF THE NORMAL ECONOMY FARE FOR EACH EXCESS KILOGRAM MORE CLOSELY REFLECTED THE LEVEL OF INDUSTRY-WIDE BAGGAGE SERVICE COSTS. UNITED STATES INTERNATIONAL CARRIERS AND A SUBSTANTIAL NUMBER OF FOREIGN CARRIERS HAVE FILED EXCESS BAGGAGE CHARGE TARIFFS AT THIS LEVEL.

AFTER THE DECISION, THE ARGUMENT WAS MADE THAT THE BOARD SHOULD DEFER IMPLEMENTATION OF ITS DECISION TO PERMIT THE CARRIERS JOINTLY, THROUGH IATA, TO CONSIDER THE MATTER FULLY AND TO PRODUCE AN ALTERNATIVE TO THE PRESENT IATA RULES. WE WOULD NOTE THAT THE BOARD FIRST STATED ITS OBJECTIONS TO THE EXCESS BAGGAGE CHARGES IN A 1964 POLICY STATEMENT, AND REPEATED ITS OBJECTIONS TO THE ANTIQUATED RULES NEARLY EVERY YEAR THEREAFTER. DESPITE THE BOARD'S CLEAR INDICATION OF POLICY OF THIS MATTER, IATA HAS BEEN UNCLASSIFIED

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UNABLE TO RESOLVE THIS PROBLEM FOR OVER TEN YEARS. EVEN AFTER INSTITUTION OF THE INVESTIGATION BY THE BOARD IN 1972 AND MAKING ALL CARRIERS PARTIES TO THE PROCEEDING, IATA WAS STILL UNABLE TO AGREE ON SUBSTANTIVE AMENDMENTS TO THE OLD SYSTEM IN US FOREIGN AIR TRANSPORTATION, EVEN THOUGH OPTIONAL "PIECE" SYSTEMS FOR THE FREE ALLOWANCE WERE INTRODUCED IN THE CARIBBEAN AND WITHIN-EUROPE AREAS. THUS, CONSIDERING THAT THE CARRIERS' OWN EFFORTS OVER A PERIOD OF MORE THAN TEN YEARS HAD BEEN UNSUCCESSFUL, THE BOARD CONCLUDED THAT FURTHER DELAY IN RESOLVING THE BAGGAGE ISSUE WAS NOT WARRANTED.

WE WOULD HOPE THAT THE GOVERNMENT OF (BLANK) WILL TAKE COGNIZANCE AND ACCEPT THE VALIDITY OF THE BOARD'S BASES FOR ITS DECISION IN THIS MATTER AND REVIEW ITS OWN POLICY IN THIS AREA SO THAT INTERNATIONAL PASSENGERS WILL NOT BE REQUIRED TO PAY FOR MORE THAN THE SERVICES THEY ARE RECEIVING. KISSINGER

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** POLICIES, AIR CARGO, AVIATION AGREEMENTS, PERSONAL EFFECTS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 20 AUG 1976  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** n/a  
**Disposition Approved on Date:**  
**Disposition Authority:** n/a  
**Disposition Case Number:** n/a  
**Disposition Comment:**  
**Disposition Date:** 01 JAN 1960  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1976STATE208116  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** SCKEITER:VLV  
**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** N/A  
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**Office:** ORIGIN EB  
**Original Classification:** UNCLASSIFIED  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
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**Page Count:** 4  
**Previous Channel Indicators:** n/a  
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**Reference:** n/a  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** CunninFX  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 02 APR 2004  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <02 APR 2004 by ReddocGW>; APPROVED <05 JAN 2005 by CunninFX>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
04 MAY 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** CIVAIR - EXCESS BAGGAGE RULES  
**TAGS:** EAIR, XX, US, CAB  
**To:** LONDON  
PARIS  
MULTIPLE  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006